



SPONSOR: Rep. Maier & Rep. Spence & Sen. Blevins & Sen. Sorenson;  
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HOUSE OF REPRESENTATIVES  
144th GENERAL ASSEMBLY

HOUSE BILL NO. 116

AN ACT RELATING TO CRIMINAL CONSEQUENCES OF CONDUCT THAT INVOLVES CERTAIN  
TRAFFICKING OF PERSONS AND INVOLUNTARY SERVITUDE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 5, Subpart E, Title 11 of the Delaware Code by adding thereto a new Section to read:

2 §787. Trafficking of persons and involuntary servitude.

3 (a) Definitions. In this Section:

4 (1) 'blackmail' is to be given its ordinary meaning and includes but is not limited to a threat to expose any secret  
5 tending to subject any person to hatred, contempt, or ridicule;

6 (2) 'commercial sexual activity' means any sex act on account of which anything of value is given, promised to,  
7 or received by any person;

8 (3) 'financial harm' includes credit extortion, criminal violation of usury laws, or employment contracts that  
9 violate the Statute of Frauds;

10 (4) 'forced labor or services' means labor, as defined in paragraph (5) of this subsection, or services, as defined  
11 in paragraph (8) of this subsection, that are performed or provided by another person and are obtained or maintained  
12 through an actor's:

13 A. causing or threatening to cause serious harm to any person;

14 B. physically restraining or threatening to physically restrain another person;

15 C. abusing or threatening to abuse the law or legal process;

16 D. knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported  
17 passport or other immigration document, or any other actual or purported government identification  
18 document, of another person;

19 E. blackmail; or

20 F. causing or threatening to cause financial harm, to or using financial control over, any person.

21 (5) 'labor' means work of economic or financial value;

22 (6) 'maintain' means, in relation to labor or services, to secure continued performance thereof, regardless of any  
23 initial agreement on the part of the victim to perform such type of service;

24 (7) 'obtain' means, in relation to labor or services, to secure performance thereof;

25 (8) 'services' means an ongoing relationship between a person and the actor in which the person performs  
26 activities under the supervision of or for the benefit of the actor. Commercial sexual activity and sexually explicit  
27 performances are forms of services under this Section. Nothing in this definition should be construed to legitimize or  
28 legalize prostitution;

29 (9) 'sexually explicit performance' means a live or public act or show intended to arouse or satisfy the sexual  
30 desires or appeal to the prurient interest of patrons;

31 (10) 'trafficking victim' means a person (i) subjected to the practices set forth in subsections (b) (involuntary  
32 servitude) or (c) (sexual servitude of a minor) of this Section, or (ii) transported in violation of subsection (d) (trafficking  
33 of persons for forced labor or services) of this Section.

34 (b) Involuntary servitude. Whoever knowingly subjects, or attempts to subject, another person to forced labor or  
35 services shall be punished by imprisonment as follows, subject to subsection (e) of this Section:

36 (1) by causing or threatening to cause physical harm to any person, not more than 20 years;

37 (2) by physically restraining or threatening to physically restrain another person, not more than 15 years;

38 (3) by abusing or threatening to abuse the law or legal process, not more than 10 years;

39 (4) by knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported  
40 passport or other immigration document, or any other actual or purported government identification document of another  
41 person, not more than 5 years;

42 (5) by using blackmail, or using or threatening to cause financial harm to, or by using financial control over any  
43 person, not more than 3 years.

44 (c) Sexual servitude of a minor. Whoever knowingly (i) recruits, entices, harbors, transports, provides, or obtains by any  
45 means, or attempts to recruit, entice, harbor, transport, provide, or obtain by any means, a minor under 18 years of age, knowing  
46 that the minor will engage in commercial sexual activity, a sexually explicit performance, or the production of pornography, or (ii)  
47 causes or attempts to cause a minor to engage in commercial sexual activity, a sexually explicit performance, or the production of  
48 pornography shall be punished by imprisonment as follows, subject to the provisions of subsection (e) of this Section:

49 (1) in cases involving a minor between the ages of 14 and 18 years, not involving overt force or threat, for not  
50 more than 15 years;

51 (2) in cases in which the minor had not attained the age of 14 years, not involving overt force or threat, for not  
52 more than 20 years;

53 (3) in cases in which the violation involved overt force or threat, for not more than 25 years.

54 (d) Trafficking of persons for forced labor or services. Whoever knowingly (i) recruits, entices, harbors, transports,  
55 provides, or obtains by any means, or attempts to recruit, entice, harbor, transport, provide, or obtain by any means, another person,  
56 intending or knowing that the person will be subjected to forced labor or services; or (ii) benefits, financially or by receiving  
57 anything of value, from participation in a venture which has engaged in an act described in violation of this Section, shall, subject to  
58 the provisions of subsection (e) of this Section, be imprisoned for not more than 15 years.

59 (e) Sentencing enhancements.

60 (1) Statutory maximum – rape, extreme violence, and death. If the violation of this Section involves kidnapping  
61 or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill,  
62 the defendant shall be imprisoned for any term of years or life, or if death results, may be sentenced to any term of years,  
63 or life, or death.

64 (2) Sentencing considerations within statutory maximums.

65 A. Bodily injury. If, pursuant to a violation of this Section, a victim suffered bodily injury, the  
66 sentence may be enhanced as follows:

67 (i) bodily injury, an additional two (2) years of imprisonment;

68 (ii) serious bodily injury, an additional four (4) years of imprisonment;

69 (iii) permanent or life-threatening bodily injury, an additional 6 to 10 years of imprisonment;

70 or

71 (iv) if death results, defendant shall be sentenced in accordance with the murder statutes for  
72 relevant level of criminal intent.

73 B. Time in servitude. In determining sentences within statutory maximums, the sentencing court  
74 should take into account the time in which the victim was held in servitude, with increased  
75 penalties for cases in which the victim was held for between 180 days and one year, and increased  
76 penalties for cases in which the victim was held for more than one year.

77 C. Number of victims. In determining sentences within statutory maximums, the sentencing court  
78 should take into account the number of victims, and may provide for substantially increased  
79 sentences in cases involving more than 10 victims.

80 (f) Restitution is mandatory under this Section. In addition to any other amount of loss identified, the court shall order  
81 restitution, including the greater of (1) the gross income or value to the defendant of the victim's labor or services or (2) the value of  
82 the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) or of  
83 Title 19 of the Delaware Code, whichever is greater.

84 (g) Assessment of victim protection needs.

85 (1) The Attorney General, in consultation with the Department of Health and Social Services, shall, no later  
86 than one year from the effective date of this statute, issue a report outlining how existing victim/witness laws and  
87 regulations respond to the needs of trafficking victims, as defined in subsection (a)(1) of this Section, and suggesting areas  
88 of improvement and modification.

89 (2) The Department of Health and Social Services, in consultation with the Attorney General, shall, no later  
90 than one year from the effective date of this statute, issue a report outlining how existing social service programs respond  
91 or fail to respond to the needs of trafficking victims, as defined in subsection (a)(10) of this Section, the interplay of such  
92 existing programs with federally funded victim service programs, and areas needing improvement and modification. The  
93 report must include a section that states the ability of State programs and licensing bodies to recognize Federal non-  
94 immigrant status for the purposes of benefits, programs, and licenses.”.

#### SYNOPSIS

This Bill to combat the crime of human trafficking is based on a model statute drafted by federal Department of Justice prosecutors with direct experience in combating human trafficking. Although human trafficking is predominantly a federal crime, the federal Justice Department is encouraging states to adopt the model act because state law enforcement and social services agencies are more likely to encounter victims and unearth trafficking cases by virtue of their local expertise, greater numbers, and street-level presence. The model act substantially mirrors the federal Trafficking Victims Protection Act of 2000 and its 2003 reauthorization.

The 13<sup>th</sup> Amendment to the U.S. Constitution mandates that "[n]either slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction...."

This Bill recognizes the crime of human trafficking and makes it more likely that the crime will be charged. Definitions focus on the coercive nature of human trafficking rather than the movement of the victim or the type of underlying labor or services required of the victim, including commercial sexual activity, exotic dancing, and menial labor. Penalties are graduated, reflecting the Justice Department's experiences and understanding of the interplay between slavery/involuntary servitude and the transportation of persons for illicit purposes. Mandatory restitution is part of all penalties for these cases. Victim protection and assistance by the Department of Health and Social Services are included in the Bill.